

# Income Tax Withholding

## for Nonresident Individuals Performing Personal Services in Nebraska

Revised October, 2004

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Web site: [www.revenue.state.ne.us](http://www.revenue.state.ne.us)



The purpose of this information guide is to explain the Nebraska income tax withholding program for payments made to nonresident individuals and certain corporations, partnerships, and limited liability companies performing personal services in Nebraska. Part I sets out the general rules. Part II provides examples of how to calculate the withholding on the Nebraska Withholding Certificate for Nonresident Individuals, Form W-4NA.

## Overview

**Nonresidents** whose wages are subject to federal withholding and who work in Nebraska are subject to the same withholding on their entire wages as that used for Nebraska residents.

Compensation paid to nonresidents performing personal services in Nebraska is subject to Nebraska withholding when:

- The payee is a nonresident individual who is not subject to withholding on such payment under the Internal Revenue Code as an employee of the payor, or the payee is a corporation, partnership, or limited liability company and all or substantially all of the shareholders, partners, or members are individuals performing the personal services; AND
- The payor makes payment(s) in excess of \$5,000; or
- The payor maintains an office or transacts business in Nebraska and makes payment(s) in excess of \$600. This includes contractors and any subcontractors engaged in the business of contracting activities and any person who is providing or arranging for labor for such contracting activities, either as an employee or as an independent contractor, for any contractor or other person.

Nonresidents performing personal services include consultants, entertainers, performers, athletes, corporate board of directors, public speakers, or those providing professional services.

## PART I: GENERAL INFORMATION

**License Requirements.** Any payor withholding Nebraska tax must have a Nebraska Income Tax Withholding Certificate. This requirement also applies to payments for nonresident personal services. Application for the required certificate is made on the Nebraska Tax Application, Form 20. There is no fee for the certificate.

**Payments Made to Nonresident Aliens.** A payor or withholding agent who pays a nonresident alien individual income for providing personal services and who has withheld federal tax on Federal Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding, must also withhold state tax using Nebraska Form W-4NA. Payments made to a nonresident alien whose country has a tax treaty with the U.S. may not be subject to withholding. The payor must obtain a written statement from the payee certifying the existence of such a treaty exempting U.S. income earned by the nonresident alien from federal or state income tax.

**Payments Made to Nonresident Contractors or Nonresident Custom Harvesters.** Payments made to nonresident contractors satisfying the terms of a construction contract in Nebraska or payments made to nonresident custom harvesters reaping crops in Nebraska may be subject to withholding. However, personal services do not include services performed when capital furnished by the nonresident contractor or nonresident custom harvester is a material income-producing factor.

Capital (e.g., construction materials incorporated into real property or harvesting equipment) is considered a material income-producing factor when the value of the materials or capital furnished or the value of the use of the capital is more than 50 percent of the amount of the payment.

## Deduction of Business Expenses.

Ordinary and necessary business expenses reasonably related to the Nebraska income can be deducted from the payment amount(s) to determine the income subject to withholding. Allowable expenses

include travel, lodging, and meals. In addition, fees paid by the nonresident to agents or others assisting in the performance of personal services in Nebraska are allowable expense deductions. This does not include payments to shareholders, partners, or members.

The total expense deduction cannot exceed 50 percent of the payment.

**Example.** For a payment of \$1,000, the maximum allowable deduction for related expenses is \$500 when calculating the net income subject to withholding.

**Payments for Services Performed BOTH In and Out of Nebraska.** The determination of whether a payment is subject to withholding generally begins with ascertaining if the nonresident performing the service must be in the state in order to fulfill the service obligation. If the answer is “yes”, the entire payment is Nebraska income.

Exceptions apply to the portion of the payment that represents time spent outside Nebraska, but only if leaving the state is necessary to complete the work. If the entire contract is completed without physical presence in this state, the income is not from a Nebraska source. See Regulation 22-003 for more information.

## Payments Made to a Corporation, Partnership, or Limited Liability Company (LLC)

Payments to a corporation are subject to the nonresident performing personal services withholding requirements if 80 percent or more of the voting stock of the corporation is held by shareholders who are performing the personal services. Generally, the corporation is considered a personal service corporation for federal purposes.

Payments to a partnership or limited liability company are subject to withholding requirements if 80 percent or more of the capital interest or profits interest of the partnership or LLC is held by the partners or members who are performing the personal services.

For such entities, it is not relevant how many of the members that contribute to the control group (80 percent) are physically present in this state. If a personal service status for the corporation, partnership, or LLC exists, withholding applies to services performed in Nebraska by any of the members.

**Example.** A Nebraska establishment pays an out-of-state theater group for performances in this state. The payment is made in the corporation’s name. The theater group is organized as a personal service corporation, and the performers are shareholders of the corporation. Since the payment is to a corporation where 80 percent or more of the stock is owned by those performing the service everywhere, withholding applies to the payment to the corporation.

## Distribution of withholding credits to shareholders, partners, or members.

Since the payment is made to a personal service entity, the payment is considered made to the individual(s) performing the service in Nebraska. The total payment must be divided among the shareholders, partners, or members working in Nebraska according to their interest in the corporation, partnership, or LLC.

Nebraska Withholding Certificate for Nonresident Individuals, Form W-4NA, line 11, provides a section to report the allocated

withholding amounts for shareholders, partners, or members when the payment is made to the corporation, partnership, or LLC.

**Example.** A personal service partnership, a consulting firm, is performing a contract for services in Nebraska. Partners A and B each own a 25 percent interest in the partnership. Partner C owns 50 percent. The contract payment of \$5,000 is made in the partnership’s name. The situations that follow relate to this example.

**Situation 1.** Partners A and B perform the contract in Nebraska. Since A and B hold the same partnership interest, the withholding calculated on the \$5,000 payment is split equally between the two.

**Situation 2.** Partners A and C perform the contract in Nebraska. The withholding calculated on the \$5,000 payment is divided between A and C based on their ownership interest, resulting in one-third of the withholding allocated to A and two-thirds to C.

**Situation 3.** Partner A performs the service in Nebraska. The entire withholding amount calculated on the \$5,000 payment is allocated to A.

See the Part II discussion below for more information about calculating allocation percentages.

## Payments Made to a Booking Agent.

When a payment is made to a booking agent, it is necessary to determine if withholding is required. (See the Overview section for payment amounts subject to nonresident personal service withholding.)

- If the payment is made to a booking agent who is a Nebraska resident, the nonresident withholding rules do not apply. However, when the Nebraska booking agent pays the nonresident talent, withholding is required.
- If the payment is made to a booking agent located outside Nebraska with no business activity in this state, withholding may apply to the payment. Determine if the agent may be considered an “independent agent” or a “production company” for the talent involved. If the payment is made to a nonresident booking agent who is considered an independent agent, withholding is not required. However, where the agent is acting like a production company for the talent, withholding is required because the payment to the agent is deemed a payment “to the talent”.
- If the payment is made from a Nebraska payor to an initial booking agent operating outside Nebraska, who then pays a third-party booking agent also operating outside Nebraska, withholding is not required on any of the payments.

**NOTE:** Although withholding on a payment to a booking agent may not be required, a Nebraska income tax liability still exists for the performance of the talent in Nebraska.

## CALCULATING THE TAX

The computation of the amount withheld is not the same as the method for wages. Instead, the calculation is a two-tier rate system.

- If the payment(s) minus expenses (net payment) is less than \$28,000, the withholding rate is four percent of the net payment.
- If the net payment is \$28,000 or more, the rate is six percent of the net payment.

The payment amount(s), expenses, and withholding amount are calculated on the Nebraska Withholding Certificate for Nonresident Individuals, Form W-4NA. (See Part II for a detailed discussion on completing this form.)

If more than one payment is made to the same nonresident individual for services that are a part of the same contract, job, or project, all of the payments will be added together to determine the correct withholding rate. See the discussion about payments for multiple services that follows Example 1 below.

If the sum of the payments minus expenses is \$28,000 or more and some of the withholding is at the lower rate, the amount to withhold from the later payments must be increased to make the total withholding equal to six percent of the total of all payments.

**Example 1.** A Nebraska business made three payments to a nonresident individual performing consulting services at the business in Nebraska. The business had an agreement with the consultant specifying the number of visits and the fee for each. The first payment after expenses was \$300; the second payment after expenses was \$150; and the third payment was for a year-end review of business operations and amounted to \$200 after expenses. The total net payments equal \$650.

Since the total gross payments exceed \$600 and the payor is a Nebraska business, withholding on each of the payments is required. In this example, the payments were made as a result of an agreement. The same analysis would apply, however, if it was reasonable for the payor to assume that multiple visits would occur, and the payments would reach the withholding threshold.

For this example, all of the payments at the time of issuance should reflect withholding at the rate of four percent. If there was no withholding on the first two payments, the last payment of \$200 must reflect the withholding on the total amount of \$650, at the four percent rate.

**Example 2.** A payor made a payment of \$15,000 to a nonresident individual performing speaking engagements in Nebraska. The contract provided for a possibility of two additional engagements, contingent upon certain conditions. Because of popular demand, a second series of lectures was held later in the year. The payment to the speaker for the later series was also \$15,000. Assume that the speaker did not claim any expenses.

Since the original agreement called for a payment of \$15,000, the payor withheld at four percent. Because the original agreement included provisions for possible payments in excess of \$28,000, the second payment must reflect the six percent withholding rate for the entire \$30,000. Any withholding at the lower rate already deducted from the first payment is subtracted. Therefore, the second payment should report the withholding amount of \$1,200, as shown below:

<b>Withholding on \$30,000 at 6%</b>	<b>= \$1,800.00</b>
<b>Withholding on the first payment at 4%</b>	<b>= - 600.00</b>
<hr/>	
<b>Withholding shown on the second payment</b>	<b>= \$1,200.00</b>

**PART II: COMPLETING THE NEBRASKA WITHHOLDING CERTIFICATE FOR NONRESIDENT INDIVIDUALS, FORM W-4NA.**

The Nebraska Withholding Certificate for Nonresident Individuals, Form W-4NA, is used by payors of nonresident individuals to calculate Nebraska income tax to be withheld from payments for personal services in Nebraska. This part will demonstrate the withholding procedures in a more complicated situation, where the payment is made to the corporation, so that all portions of the Form W-4NA may be utilized for discussion purposes.

**Recordkeeping Requirements**

The completed Form W-4NA is a part of the payor’s records and must be kept as are other withholding tax records. Federal Form 1099-MISC will be issued by the payor based on the information on the completed Form W-4NA. The Forms 1099-MISC, state copies, are included with the Form W-3N, Nebraska Reconciliation of Income Tax Withheld, filed by the payor with the Nebraska Department of Revenue.

**Completing the Form W-4NA when the payment is made to the personal service entity.**

When the payment is made to a personal service entity, the Form W-4NA, line 11 allocation section, must be completed to report to the individual partners, shareholders, or members the distributive share of tax withheld. The example and completed Form W-4NA that follow illustrate this situation.

**Example.** XYZ Business, a Nebraska payor, contracted with Advise Consultants, Inc., an out-of-state personal service corporation, for consulting in Nebraska. The payment was \$50,000. For a one-month period, two consultants from Advise spent time evaluating XYZ’s manufacturing operation in Nebraska. The consultants present in Nebraska were shareholders of that corporation performing consulting services in this state. Consultant A’s interest in Advise Consultants, Inc., was 10 percent. Consultant B’s shareholder interest was 30 percent. The agreed-upon payment of \$50,000 was made to the corporation, Advise Consultants, Inc. The completed Form W-4NA on the next page shows the report of withholding for nonresident personal services.

In this example, since the payment was made to the corporation, the line 11 allocation section was completed. Here the percentage of allocation was computed based on the consultants’ ownership interests where A=10 percent, B=30 percent, for a total Advise ownership interest for shareholders performing services in Nebraska of 40 percent. Of that total ownership interest, it follows that A’s allocation percentage equals 10/40, or 25 percent, and B’s allocation equals 30/40, or 75 percent. Separate Federal Forms 1099-MISC must be issued to each shareholder listed (Consultants A and B) to report his or her amount of allocated tax withheld.

NOTE: If the payment is made directly to A and B and not the corporation, the line 11 allocation section is not completed. Instead, the withholding calculation stops with the line 9 or line 10 withholding tax liability for the individual payee. Therefore, if the payment is made to A and B, two Forms W-4NA are

required, reporting the separate payment and expense allocations for A and B and the resulting withholding tax. The payor must also issue separate Federal Forms 1099-MISC to A and B, reporting the amount withheld as shown on each Form W-4NA.

Nebraska Withholding Certificate for Nonresident Individuals		FORM W-4NA	
Use Federal Forms 1099-MISC or 1042-S Read instructions on reverse side			
<b>PAYOR'S NAME AND LOCATION ADDRESS</b>		<b>PAYEE'S NAME AND LOCATION ADDRESS</b>	
Name of Nebraska Payor <b>XYZ Business</b>		Payee's First Name and Initial <b>Advise Consultants, Inc.</b>	
Address (Number and Street, or Rural Route and Box Number) <b>Main Street</b>		Address (Number and Street, or Rural Route and Box Number) <b>Broadway Drive</b>	
City, Town, or Post Office <b>Middletown</b>	State <b>NE</b>	City, Town, or Post Office <b>Borderstate</b>	State <b>USA</b>
Zip Code <b>55555</b>		Zip Code <b>55555</b>	
Nebraska Identification Number <b>21 — 123456</b>		Social Security Number <b>555   55   5555</b>	
Lines 1 and 2, and 6 through 10 must be completed by the PAYOR			
1 Date(s) services performed in Nebraska .....		1 <b>4/5/2004-5/5/2004</b>	
2 Total payment(s) for personal services performed in Nebraska .....		2 <b>\$ 50,000 00</b>	
• Lines 3 through 5 and line 11 may be completed by the PAYEE (attach additional schedule if necessary)			
3 List type(s) and amount(s) of ordinary and necessary business expenses reasonably related to Nebraska income (see instructions):			
Type of Expense	Amount		
Supplies	\$ 2000 00		
Car Rental	1000 00		
Lodging	2000 00		
Enter total line 3 amount here .....	3 <b>\$ 5000 00</b>		
4 List name(s), address(es), social security number(s), and amount(s) paid to others for performances or appearances and other fees reasonably related to Nebraska income (see instructions):			
Name	Address	Social Security No.	Amount Paid
Employee (Joe Smith)	Lincoln, NE	123-45-6789	\$ 15,000 00
Enter total line 4 amount here .....	4 <b>\$ 15,000 00</b>		
5 Total business expenses and payments for which you are claiming an expense deduction (total of lines 3 and 4) .....		5 <b>\$ 20,000 00</b>	
6 50% limitation on expense deduction (line 2 amount multiplied by .50) .....		6 <b>\$ 25,000 00</b>	
7 Enter the amount from line 5 or line 6, whichever is less .....		7 <b>\$ 20,000 00</b>	
8 Payment(s) subject to Nebraska withholding tax (line 2 minus line 7) .....		8 <b>\$ 30,000 00</b>	
9 If the amount on line 8 is less than \$28,000, multiply the amount by .04 and enter the result on line 9 — the amount to be withheld .....		9 <b>\$ 0-</b>	
10 If the amount on line 8 is \$28,000 or greater, multiply the amount by .06 and enter the result on line 10 — the amount to be withheld .....		10 <b>\$ 1800 00</b>	
Allocation to Shareholders, Partners, or Members Subject to Nebraska Income Tax (attach additional schedule if necessary)			
11 Enter in the space provided the partner's, shareholder's, or member's name, social security number or federal identification number, percent of allocation, and the amount of allocation of Nebraska income tax withheld.			
Names of Partners, Shareholders, or Members	Social Security Number or Federal Identification Number	Percent of Allocation	Amount of Allocation of Nebraska Income Tax Withheld
Consultant A	145-89-1234	25%	\$ 450 00
Consultant B	456-78-1234	75%	\$ 1350 00
TOTALS		100%	\$ 1800 00
Under penalties of perjury, I declare that I have been authorized to make this statement and that the information disclosed in determining the amount of individual income tax to be withheld and allocated from the payment received for personal services performed in Nebraska is, to the best of my knowledge and belief, correct and complete.			
sign here <i>Jane Doe</i> Signature of Payee or Authorized Agent		Signature of Preparer Other than Payee	
Date <b>12-4-2004</b> Telephone Number <b>(999) 555-3232</b>		Date	
City		State Zip Code	
8-442-1988 Rev. 11-2002 Supersedes 8-442-1988 Rev. 12-2001			

## FOR NEBRASKA TAX ASSISTANCE

For All Tax Programs Except Motor Fuels

Contact your regional office or call **1-800-742-7474** (toll free in NE and IA)  
or **1-402-471-5729**

Nebraska Department of Revenue Web site address: [www.revenue.state.ne.us](http://www.revenue.state.ne.us)

A copy of the Taxpayer Bill of Rights is available by calling any of our regional offices or visiting our Web site.

### SCOTTSBLUFF

Panhandle State Office Complex  
4500 Avenue I, Box 1500  
Scottsbluff, Nebraska 69363-1500  
Telephone (308) 632-1200

### NORTH PLATTE

Craft State Office Building  
200 South Silber Street  
North Platte, Nebraska 69101-4200  
Telephone (308) 535-8250

### GRAND ISLAND

First Federal Bank Building, Suite 460  
1811 West Second Street  
Grand Island, Nebraska 68803-5469  
Telephone (308) 385-6067

### NORFOLK

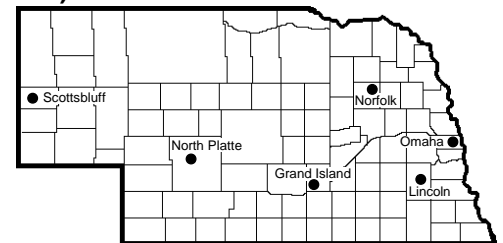
304 North 5th Street, Suite "D"  
Norfolk, Nebraska 68701-4091  
Telephone (402) 370-3333

### OMAHA

Nebraska State Office Building  
1313 Farnam-on-the-Mall  
Omaha, Nebraska 68102-1871  
Telephone (402) 595-2065

### LINCOLN

Nebraska State Office Building  
301 Centennial Mall South  
Lincoln, Nebraska 68509-4818  
Telephone (402) 471-5729



For Motor Fuels tax programs only call toll free 1-800-554-3835 (Lincoln residents call 471-5730).

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